

STAFF REPORT

TO: Planning and Zoning Commission **DATE:** 01/18/07(public hearing)

FROM: Scott Shuford, AICP, Planning and Development Director

SUBJECT: Zoning Ordinance Wording Amendments – (a) to establish a new steep slope and ridgetop overlay district; (b) to establish new open space requirements; and (c) to establish new requirements for retaining walls.

Summary Statement: The consideration of amendments to Chapter 7 of the Code of Ordinances of the City of Asheville (UDO) to establish: (a) to establish a new steep slope and ridgetop overlay district; (b) to establish new open space requirements; and (c) to establish new requirements for retaining walls.

Background:

(a) City Council has requested that staff develop new regulations pertaining to steep slope and ridgetop development. Steep slope and ridgetop development regulations, to be effective, must take into account a wide variety of factors. These factors include:

- ? Percent of slope
- ? Extent of grading
- ? Width of road corridors
- ? Residential density
- ? Nonresidential intensity of development
- ? Structure height
- ? Presence of uphill and downhill trees and other significant vegetation
- ? Geotechnical analysis

The following ordinance has been crafted to account for these factors. City staff has developed this ordinance by examining “best practices” in numerous communities across the country. We have reviewed the ordinance components with a focus group of design professionals. We have received comments from the public via a well-attended public meeting and through email and other correspondence. We have also examined development in and around Asheville to ascertain what makes some steep slope development relatively innocuous and other such development conspicuous.

This ordinance is intended to replace the hillside requirements (Section 7-12-4) and augment the protected mountain ridges regulations (Section 7-12-3).

To summarize the Steep Slope and Ridgetop ordinance, it proposes to:

- ? Define steep slopes and ridgetop areas
- ? Apply to virtually all new development and to additions of a certain size
- ? Establish grading allowances based on degree of slope

- ? Establish road corridor width and height standards
- ? Provide standards for manufactured slopes
- ? Limit structure height in steep slope and ridgetop areas
- ? Require preservation of trees and stands of rhododendron and mountain laurel; establish fines and replacement schedules for removal of such vegetation
- ? Provide density and intensity limits
- ? Require geotechnical analysis
- ? Allow density and intensity bonuses for clustering or location of development on less steep areas

(b) This code amendment is intended to implement goals, objectives and tasks of the City Council's Strategic Operating Plan (SOP) related to the Natural and Built Environment. The SOP proposes enhanced recreational facilities, especially greenways, as well as a fee-in-lieu program. The UDO currently contains requirements for open space provision for property being developed or redeveloped for residential and for tourist accommodation purposes. These requirements note the connection between development and loss of open space, and include measures to compensate for this loss. In practice, however, the current requirements are not especially effective in providing meaningful compensatory open space and may, in some cases, actually be at odds with City smart growth policies that promote a more urban development pattern. The proposed ordinance provides a more balanced approach to open space provision by better relating it to the use proposed for the property, the associated zoning district or districts, and any related park, greenway and open space plans and policies. Additionally, there is greater flexibility created by providing for fee-in-lieu of open space.

(c) Since the steep slopes and ridgetop ordinance will result in the increased construction of retaining walls to minimize grading and land disturbance, a separate ordinance regulating retaining walls has been developed in concert with that ordinance, although the retaining wall requirements will apply to a broader range of circumstances than just steep slope and ridgetop situations.

The amendments have been routed to CAN, CREIA, and CIBO for review and comment.

Pros

- ✍ Provides a more comprehensive and effective approach to steep slope and ridgetop development regulation.
- ✍ Creates a simpler, more flexible set of open space regulations.
- ✍ Provides a mechanism to address the impacts of retaining walls.

Con

- ✍ Will likely result in increased cost of development on steep slopes and ridgetops.
- ✍ Will likely add to the cost of retaining walls.
- ✍ Some projects may not be pursued due to expense of compliance.

Recommendation: Staff recommends approval of the proposed code amendment.

ORDINANCE NO. _____

**ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE
CITY OF ASHEVILLE ESTABLISHING STEEP SLOPE AND RIDGETOP
DEVELOPMENT REQUIREMENTS.**

WHEREAS, the City of Asheville has the authority pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the City's zoning regulations was adopted on May 27, 1997 (Ordinance No. 2369) and is codified in Chapter 7 of the Asheville City Code (herein "Unified Development Ordinance"), and maps dividing and classifying the property within the City's zoning jurisdiction were adopted on May 27, 1997 (Ordinance No. 2370) and are on file and maintained in the offices of the Asheville Planning and Development Department (herein "Official Zoning Maps"); and

WHEREAS, the Asheville City Council has determined following a public hearing on _____, that it is in the interest of the public health, safety and welfare to amend certain provisions of the Unified Development Ordinance to establish steep slope and ridgetop development requirements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Section 7-9-11 be created to read as follows:

Sec. 7-9-11. Steep Slope and Ridgetop Development

(a) *Purpose.* Asheville is in a unique geographic location where mountains, valleys, and hills constitute significant natural topographic features. The mountains and hillsides of Asheville are visible from many places in the city, adding to the quality of life for residents, and improving tourism opportunities for visitors. These areas are sensitive to development activities and measures must be taken to maintain slope stability and to control erosion and stormwater. In order to ensure the preservation of this character and the appropriate use of the hillsides, the regulations of this section are established to recognize that development of land in steep or mountainous areas involves special considerations and unique development standards.

(b) *Goals and objectives.* This section is intended to achieve the following goals and objectives:

- (1) To promote public safety by ensuring that development on steep slope and ridgetop areas addresses slope stability issues in an effective manner;

- (2) To provide greater design flexibility and efficiency in the location of development and infrastructure, including the opportunity to reduce length and width of roads, utility runs, and the amount of grading and paving;
- (3) To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes and ridgetops;
- (4) To provide for the conservation and maintenance of steep slope and ridgetop areas within city jurisdiction to achieve the above-mentioned goals;
- (5) To provide opportunities for developers to minimize impacts on steep slope and ridgetop areas;
- (6) To provide standards reflecting the varying circumstances and interests of individual landowners, and the individual characteristics of their properties;
- (7) To preserve scenic views and vistas that are inherent to Asheville's character and to minimize perceived density by minimizing views of new development from within and outside of the development; and
- (8) To provide mechanisms to effectively enforce the requirements of this section.

(c) Steep slopes and ridgetops designated.

(1) Steep slopes are designated as:

- ? Areas at or above 2220 feet in elevation above mean sea level and having an existing grade of 15% or more; or
- ? Areas below 2220 feet in elevation above mean sea level and having an existing grade of 25% or more for properties zoned RS-2, RS-4, RS-8, RM-6, RM-8, and RM-16.

(2) Ridgetops are designated as:

- ? Protected mountain ridges as defined in Section 7-12-3(e) of this code regardless of whether such ridges have been otherwise designated on maps filed in accordance with Section 7-12-3(g) of this code.
- ? Any areas within 100 vertical feet of a ridgeline that is 500 or more feet above the adjacent valley floor when the ridgeline is a designated watershed boundary (for a watershed with a 100-acre minimum area) at an elevation of 2320 feet or greater.

(d) Application. The provisions of this section apply in the following circumstances.

Any portion of a lot, parcel, or tract of land which has been approved for development or subdivision prior to the date of adoption of this section shall not be required to comply with the provisions of this section if no further development or change to the approved subdivision or development plan is proposed within that portion of the lot, parcel, or tract of land. For the purpose of applying this provision, approval of a subdivision plat shall not constitute approval of a development plan for the individual lots in the subdivision.

- (1) Where new development is proposed for a one or two family dwelling, development requiring Level I, II or III site plan review pursuant to section 7-5-9 of this chapter, or subdivision review pursuant to section 7-5-8 of this chapter.
- (2) Additions to structures greater than 1,000 square feet or new site disturbances encompassing more than 1,000 square feet of disturbed area. These additions and site disturbances shall include smaller additions or disturbances over a three year period that accumulate to exceed the above limitations.
- (3) Substantive amendments to an approved subdivision or development plan shall require full compliance with the requirements of this section. For the purpose of this section, “substantive amendments” shall include increases in the number of lots or density or intensity of development by more than 10% over that previously approved, location of a structure or structures in areas of steeper slopes than originally approved, and similar amendments that substantively increase the extent of development impact.
- (4) Regardless of the provisions of this section, lawfully-established lots in existence on {effective date of this ordinance} may be developed with a single family home provided that the requirements of subsections (e), (f), (g) and (i) are met. Subsection (e) shall not apply to such lots where extent of grading has been previously designated and approved on a preliminary plat.

(e) *Grading.* The following requirements regulate the extent and technique of grading in the Steep Slope and Ridgetop Overlay District based on the existing grade. For the purposes of this section, “existing grade” is defined as the existing grade of the land on {effective date of this ordinance}. It is determined as follows.

Calculation of existing grade. The applicant may submit calculations of the existing grade for the entire property; these calculations shall be sealed by a licensed surveyor, engineer, or landscape architect. If no calculations are provided, the City of Asheville will be responsible for calculating the existing grade of any property using the following formula:

$$S = \frac{.0023(I)(L)}{A}$$

Where:

S = Existing grade of parcel in percent

I = Contour interval of map in feet, with said contour intervals to be five feet or less

L = Total length of the contour lines within the parcel in feet

A = Area of the parcel in acres

0.0023 = Product of two constants, one of which converts feet into acres and one of which converts a decimal fraction into a percentage

Once “S” is calculated it shall be rounded to the nearest whole number.

If existing grade cannot be calculated using the above methods, it shall be estimated using best available resources by the planning and development director whose determination shall be final.

- (1) *Grading extent*. Within the areas covered by the Steep Slope and Ridgetop Overlay District, the extent of grading on a property is governed by the following table.

MAXIMUM PERCENTAGE OF SITE GRADING BY EXISTING GRADE	
Existing Grade	Maximum Percent of Site Graded
15%-19%	45%
20%-24%	40%
25%-29%	35%
30%-34%	30%
35%-39%	25%
40% +	15%

NOTE: This table shall be interpreted in the following manner: “15% -19%” will include all slopes of 15% up to any slope less than 20%, etc.

- (2) *Road construction*. Roads constructed on any lot, parcel, or tract of land designated as a steep slope area shall be contained within a cross-section having a maximum vertical, horizontal and combined vertical and horizontal dimensions provided in the following table. Cul-de-sac circles, T-turnarounds and other road terminus features shall be exempt from these requirements. For the purpose of implementing these requirements, road corridor cross-sections shall be provided for each 100 linear feet of road corridor and shall indicate existing grade at the point of cross-section. Retaining walls erected to meet these corridor requirements shall be located outside of public rights-of-way and shall be privately maintained.

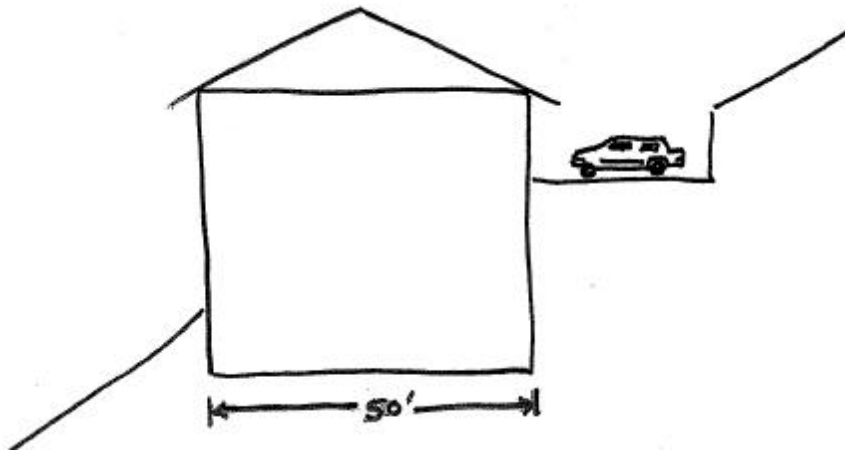
MAXIMUM ROAD CORRIDOR CROSS-SECTION BY GRADE			
Existing Grade	Maximum Cross-Section Dimensions		
	Vertical	Horizontal	Vertical + Horizontal
15%-24%	40	60	85
25%-29%	50	80	120
>30%	60	90	135

NOTE: This table shall be interpreted in the following manner: “15% -24%” will include all slopes of 15% up to any slope less than 25%, etc. Additionally, the “Vertical + Horizontal” numbers are NOT supposed to represent the sum of the two preceding columns on the same row; the numbers are less than that sum in order to require a tradeoff decision with regard to vertical and horizontal dimensions in order to minimize road corridor impacts.

(3) *Manufactured slopes.* Manufactured slopes are slopes created by grading operations. Manufactured slopes shall be modulated by landscaping to create natural appearing slopes and hillsides. The minimization of retaining walls and preservation of trees is a priority for maintaining the natural appearance of manufactured slopes. Manufactured slopes shall not exceed the parameters listed in the following table except in circumstances where stable exposed rock is the intended end result of the manufactured slope, in which circumstance the cut and fill slopes may be increased at the discretion of the city engineer. Reforestation of manufactured slopes other than stable exposed rock shall consist of the placement of any of the tree or shrub species and size as specified in a list prepared and maintained by the Tree Commission provided not more than 20% of any one tree or shrub species is used except that reforestation using entirely mountain laurel or rhododendron is acceptable. A maintenance plan shall be required for reforestation areas and such plan shall include provisions for replacement of dead vegetation when greater than a 50% mortality rate occurs.

MANUFACTURED SLOPES			
Slope Type	Maximum Slope	Maximum Height	Required Reforestation
Cut Slope	1.5:1	30 feet	Every 3 feet on center
	2:1	50 feet	Every 5 feet on center
Fill Slope	2:1	50 feet	Every 5 feet on center

(f) *Structure height and depth.* The maximum height of principal structures in steep slope and ridgetop areas shall be limited to two stories (maximum 30 feet) on the uphill side of the structure and three stories (maximum 40 feet) on the downhill side of the structure, regardless of height allowances elsewhere in this code. For ridgetop development where structures are not located so as to have an uphill or a downhill side, the maximum height of principal structures shall be limited to two stories (maximum 30 feet). Accessory structures shall not exceed 20 feet in height on any side. For the purpose of this section, height shall be calculated as the vertical distance from existing grade to the midpoint of the peak and eave for structures with pitched roofs and from the top of the parapet or roof surface, whichever is greater, for flat-roofed structures. An additional 12 feet in height may be allowed on the uphill side and 20 feet in height on the downhill side of the principal structure if any downhill-facing façade and the entire roof structure are installed and maintained with materials or paint having an average Light Reflectivity Value (LRV) of 25 or less and a minimum setback of 50 feet from the downhill side property line is maintained; this provision is not available for ridgetop development. The maximum depth through any one cross-section of a structure in steep slope and ridgetop areas having a slope of 40% or more shall be 50 feet in order to promote construction that is less intrusive on a slope (see illustration below).



(g) *Tree and other specified vegetation preservation.* All trees and other specified vegetation shall be preserved in steep slope and ridgetop areas except in areas approved for grading in subsection (e) above or within ten feet of building footprints. For new development or additions, these preservation areas shall be designated on plans submitted for development approval. For existing development, aerial photographs or other methods of determining the extent of tree cover shall be utilized to enforce this requirement.

For the purpose of this section, “trees and other specified vegetation” shall mean all native trees of six or more inches in diameter at breast height (dbh) and any mature grouping of rhododendron or mountain laurel of 250 square feet or more in area. Non-native invasive species shall not be included in this definition and may be removed. During construction, these preservation areas shall be clearly designated using tree protection fencing to protect them from disturbance.

Fines and the replacement schedule for removal of trees and other specified vegetation required to be preserved, unless such trees and vegetation are determined to be dead, dying or represent a threat to property by the city arborist or other designated person(s) and said removal is thereby authorized, shall be as established in the following table. Replacement trees shall be selected from the city’s list of large maturing trees and shall be of a minimum of two inches diameter at breast height. In the event that illegal tree and other specified vegetation removal cannot be precisely determined from an on-site inspection, aerial photographs or other methods, the fine shall be \$8,000 and the replacement schedule shall be 20 trees and 10 rhododendrons or mountain laurels for each 1,000 square feet of area from which trees have been removed. In the event that the city arborist or other designated person(s) determines that the site cannot accommodate the replacement schedule planting due to size, slope, or other related conditions, the payment of a fee-in-lieu of replacement planting shall be required at the rate of \$300 per tree and \$100 per rhododendron or mountain laurel not planted on advice of the city arborist or other designated person(s).

FINES AND REPLACEMENT SCHEDULE FOR REMOVAL OF TREES AND
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OTHER SPECIFIED VEGETATION		
Size of Tree or Area of Specified Vegetation Removed	Fine	Replacement Schedule
Each 100 Square Feet of Specified Vegetation Above 250 Square Feet	\$300	3 Rhododendron or Mountain Laurel (as applicable) per each 100 square feet (3 gallon minimum size)
6-8" tree (dbh)	\$300/tree	2 trees
8-12" tree (dbh)	\$500/tree	3 trees
12-16" tree (dbh)	\$700/tree	5 trees
16-20" tree (dbh)	\$1,000/tree	7 trees
Over 20" tree (dbh)	\$1,500/tree	9 trees

(h) *Density*. Densities of residential development shall be reduced in steep slope and ridgetop areas to support the goals and objectives of this section.

- (1) The allowable density shall be as follows for the listed underlying zoning districts. The fractional requirements provisions of Section 7-2-3(b) shall not apply for density calculations in the steep slope and ridgetop areas.

MAXIMUM NUMBER OF UNITS PER ACRE BY EXISTING GRADE					
Historic Grade	RS-2	RS-4	RM-6	RS-8 RM-8	RM-16 & other districts allowing residential development
15%-19%	1.2	1.8	2.7	3.6	7.2
20%-24%	1.0	1.4	2.4	3.2	5.6
25%-29%	0.7	1.0	1.7	2.8	4.2
30%-34%	0.6	0.8	1.2	2.0	3.8
35%-39%	0.4	0.6	0.8	1.2	3.0
40%	0.1	0.2	0.3	0.4	0.8

**** NOTE:** The above table shall be interpreted in the following manner:

- ? "15% -19%" will include all slopes of 15% up to any slope less than 20%, etc.
 ? 0-0.99 = no unit, 1.0 – 1.99 = 1 unit, etc.

- (2) *Existing lots or parcels*. Construction of a single-family residence shall be permitted on any lawfully established lot or parcel existing as of the date of adoption of this ordinance, even if the parcel does not meet the maximum density requirements listed in the table above. In such cases, however, the requirements of subsections (e), (f), (g) and (i) shall still apply. Subsection (e) shall not apply to such lots where extent of grading has been previously designated and approved on a preliminary plat.

- (3) *Density bonus*. A density bonus may be granted for each of the following items. A total density bonus of up to 60% of the allowable density may be

achieved under this provision through accumulation. Bonus applications may result in administratively-approved reductions in minimum setback requirements and minimum lot size if necessary to achieve site preservation, screening or grading objectives. Such reductions shall be indicated on the development plans submitted to obtain the density bonus and the rationale behind the reductions shall be clearly demonstrated on the plans or other application materials.

- a. Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading and the steeper, more sensitive areas are preserved through an easement; bonus of up to 60% based on the following table. Clustering in single family residential districts and the RM-6 district may multi-family construction up to eight units per building if necessary to achieve site preservation objectives.

PERCENT OF SITE PRESERVED	DENSITY BONUS
30-40%	30%
>40-50%	40%
>50-60%	50%
>60%	60%

- b. Grading is limited to 10% or more under the maximum allowed under subsection (e) above; bonus of 20%.
- c. Buildings and parking areas are screened by vegetation to minimize the visual impact from key viewing areas, which include the downtown central business district, the Blue Ridge Parkway, public parkland and recreational areas, and major streets and highways; bonus of 20%.
- d. Grading of roads and access drives is located outside of slopes exceeding 20% and/or is predominately located on existing cleared roadbeds; bonus of 20%.
- e. Grading for the principal structure(s) is located completely outside of slopes exceeding 20%; bonus of 20%.

(h) *Nonresidential Development Intensity.* Intensity of nonresidential development shall be limited as follows in the Steep Slope Overlay District to support the goals and objectives of the district. For the purpose of this section, “floor area ratio” shall mean the total gross floor area of the building or buildings on a lot divided by the gross area of the lot or site.

(1) The allowable intensity shall be as follows for the listed below:

MAXIMUM FLOOR AREA RATIO BY EXISTING GRADE OR RIDGETOP	
Existing Grade	Maximum Allowable Floor Area Ratio, Not To Exceed Structure Size Limits of the Underlying Zoning District
15%-19%	0.20
20%-	0.15

24%	
25%- 29%	0.10
30%- 34%	0.05
35%- 39%	0.025
40%	0.01
Ridgetop	0.10

**** NOTE: The above table shall be interpreted in the following manner. “15% -19%” will include all slopes of 15% up to any slope less than 20%, etc.**

- (4) *Intensity bonus.* An intensity bonus may be granted for each of the following items. A total intensity bonus of up to 60% of the allowable intensity may be achieved under this provision through accumulation. No intensity bonus shall allow a structure of greater size than allowed under the underlying zoning district.

- a. Buildings, parking, and other improvements are clustered on less steep and sensitive areas of the site to reduce the amount of grading and the steeper, more sensitive areas are preserved through an easement; bonus of up to 60% based on the following table.

PERCENT OF SITE PRESERVED	INTENSITY BONUS
30-40%	30%
>40-50%	40%
>50-60%	50%
>60%	60%

- b. Grading is limited to 10% or more under the maximum allowed under subsection (e) above; bonus of 20%.
- c. Buildings and parking areas are screened by vegetation to minimize the visual impact from key viewing areas, which include the downtown central business district, the Blue Ridge Parkway, public parkland and recreational areas, and major streets and highways; bonus of 20%.
- d. Grading of roads and access drives is located outside of slopes exceeding 20% and/or is predominately located on existing cleared roadbeds; bonus of 20%.
- e. Grading for the principal structure(s) is located completely outside of slopes exceeding 20%; bonus of 20%.

(i) *Geotechnical analysis required.* Development in steep slope areas having an existing grade of 40% or greater shall be required to undergo geotechnical analysis by a NC registered professional engineer to determine the stability of the underlying geology and soils to support the proposed development. The geotechnical analysis report shall be required to be submitted prior to the issuance of a building permit. If a geotechnical

analysis has been performed for subdivision approval that includes building pad analysis for the individual lots, it is unnecessary to submit a new analysis for each lot, provided the building pad location does not change by more than 20 feet in any one direction.

(j) Sewer and water service required. Central sewer and water shall be required to serve new developments described in subsection (d)(1) above on steep slope and ridgetop areas.

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall become effective upon adoption.

Read, approved, and adopted this _____ day of _____, 2007.

City Clerk

Mayor

Approved as to form:

City Attorney

ORDINANCE NO. _____

**ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE
CITY OF ASHEVILLE REVISING THE OPEN SPACE REQUIREMENTS.**

WHEREAS, the City of Asheville has the authority pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the City's zoning regulations was adopted on May 27, 1997 (Ordinance No. 2369) and is codified in Chapter 7 of the Asheville City Code (herein "Unified Development Ordinance"), and maps dividing and classifying the property within the City's zoning jurisdiction were adopted on May 27, 1997 (Ordinance No. 2370) and are on file and maintained in the offices of the Asheville Planning and Development Department (herein "Official Zoning Maps"); and

WHEREAS, the Asheville City Council has determined following a public hearing on _____, that it is in the interest of the public health, safety and welfare to amend certain provisions of the Unified Development Ordinance to revise the open space requirements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Section 7-11-3 be amended to read as follows:

Sec. 7-11-3. Open space standards.

- (a) *Purpose.* The open space standards contained herein are established to provide for the reservation of open spaces in both residential and non-residential developments located in the City of Asheville and its area of jurisdiction. Preservation of open space in developing areas serves a variety of purposes, including meeting the recreational needs of residents, improving the aesthetic character of the community, reducing stormwater runoff, and enhancing air quality. The standards set forth below provide for the protection of open space in both residential and non-residential developments.
- (b) *Definitions.* For the purpose of this section, the following terms are defined.

Active recreational facilities mean tot lots, tennis or basketball courts, playgrounds with equipment such as swing sets and climbing apparatus, swimming pools, pavilions or covered decks available for common recreational use, or similar facilities.

Suburban open space amenities mean open water, wetlands, floodplains, woodlands, land which exceeds a 25 percent slope or is otherwise included in the steep slope and ridgetop overlay district, land used for stormwater retention, land available to residents or tenants for active or passive recreation, including clubhouses, parks, walking trails not used to meet sidewalk requirements, playgrounds, swimming pools, benches, picnic tables, and similar amenities.

Urban open space amenities mean public sidewalks in excess of standard sidewalk requirements, streetscape and hardscape areas accessible to the public including sidewalk café areas, areas containing public art, and similar amenities.

- (c) *Open space requirement.* Open space shall be provided in accordance with the following table for: initial residential development containing eight or more units or redevelopment or additional development that adds eight or more units; for initial nonresidential or mixed use development of lots containing one acre or more in area; or for redevelopment or additional development that adds 25 percent more nonresidential or mixed use floor area on lots containing one acre or more in area. The CBD district and single-family residential subdivisions with a minimum lot size of one acre or more are exempt from the requirements of this section.

ZONING DISTRICT	REQUIRED OPEN SPACE
<p>All residential districts, except URD</p> <p>(NOTE: single-family residential subdivisions with a minimum lot size of one acre or more are exempt from the open space requirements)</p>	<p>Single-family/duplex subdivisions : 20% of subdivision lot area.</p> <p>Other residential: 500 square feet of open space per unit or 15% of lot area, whichever is greater. In no case shall this amount constitute less than 10% of lot area.</p> <p>Nonresidential uses (e.g., churches, schools, etc.): 20% of lot area.</p>
<p>All other districts, including URD</p> <p>(NOTE: CBD is exempt from these requirements)</p>	<p>5% of lot area for developments that primarily include urban open space amenities</p> <p>15% of lot area for developments that primarily include suburban open space amenities</p>

Regardless of the requirements and exemptions of this subsection, any portion of the site of the proposed development that is designated as future open space or greenway in the Greenway Master Plan of the City of Asheville shall be reserved for open

space. This area may be counted toward the total amount of open space required for the development.

If the total amount of land required to comply with the Greenway Master Plan is less than the total amount required for the development by the above table, then the developer shall provide additional open space to meet the requirement of the above table. If the total amount of land required to be reserved to comply with the Greenway Master Plan exceeds the total amount required by the above table, then the developer must still provide the open space required by the Greenway Master Plan.

As compensation for any open space dedication associated with implementing the Greenway Master Plan above that requirement listed in the above table, the developer is eligible for a density bonus of one dwelling unit per each 1,000 square feet of land area in excess of that required in the above table or 500 square feet of nonresidential gross floor area per each 1,000 square feet of land area in excess of that required in the above table, up to a maximum of a 25% increase above the maximum density or intensity allowed in the applicable zoning district, provided hillside, river resource yard, flood protection, and other environmental preservation regulations are complied with. Alternatively, upon approval by the parks and recreation director, open space fee-in-lieu funds may be used to purchase the additional requirement, or the additional requirement may be reduced by the parks and recreation director.

Individual areas designated as open space areas shall not contain less than 500 square feet when developed with urban open space amenities and 2,000 square feet when developed with suburban open space amenities, although smaller areas may be approved by the planning and development director if the intent of this ordinance is determined to be met.

(c) *Land acceptable for open space designation.* The classes of land enumerated in the subparagraphs below may be utilized to meet the requirements of this section. Land that is burdened with easements may be used provided that the easements do not interfere with the use of the land for open space purposes. In no case shall the following land be used for open space: land that is contaminated with hazardous or toxic waste or materials as defined by state or federal regulations (except land covered by an approved mitigation plan and deemed acceptable to the city); land occupied by streets, drives, parking areas, required landscape buffers, or structures other than recreational structures; and land with a minimum width less than 24 feet unless part of a greenway system or specifically approved by the planning and development director. Urban-scale mixed use districts (NCD, UV, URD, UPD) are exempt from the minimum width requirement. Public use of the open space may be limited to residents of

the development except for land used for public sidewalks as described in paragraph (3) below.

(1) For subdivisions: Land that is accessible from a public or approved private street either directly or via an easement of at least 10 feet in width. For other developments: Land that is visible from public rights-of-way or otherwise visually-accessible to the public.

(2) Open water, wetlands, and floodplains (up to 50 percent of the requirement); River Resource Yard (up to 100 percent of the requirement).

(3) Land used for public sidewalks in excess of standard sidewalk requirements, streetscape and hardscape areas accessible to the public including sidewalk café areas, areas containing public art, and similar urban open space amenities.

(4) Land on which locally or nationally designated historic structures are located and determined to be contributing to the designation.

(5) Land which exceeds a 25 percent slope or is otherwise designated as a steep slope and ridgetop area may be used to provide up to 50 percent of the required open space if existing slopes and vegetation so designated remain undisturbed.

(6) Land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, may be used for up to 50 percent of the required open space; green roofs are eligible to be counted as open space under this provision. Additionally, land used for stormwater retention, provided such land is natural in appearance and is not separately fenced, that is developed using best management practices (e.g., constructed wetlands, rain gardens, green roofs or similar features), and either exceeds the required amount of retention or treats off-site stormwater may be used for up to 100 percent of the required open space at the discretion of the planning and development director after consultation with the city engineer.

(7) Land available to residents or tenants for active or passive recreation, including clubhouses, parks, walking trails not used to meet sidewalk requirements, playgrounds, swimming pools, benches, picnic tables, and similar land uses or facilities.

(d) *Reductions in required open space reservation.* The amount of land required to be designated for open space may be reduced by the planning and development director in the following situations:

(1) If public parks or public recreational facilities are constructed on the land designated as the open space consistent with a plan approved by the parks and recreation director, the open space

requirements may be reduced in proportion to the extent of the improvements made by the applicant as determined by the parks and recreation director.

(2) If the land proposed for designation as open space adjoins parkland or other existing public open space, the open space requirements may be reduced by up to a maximum of 25 percent of the total requirement, provided access to the parkland is provided via an easement or other connection acceptable to the parks and recreation director.

(3) If active recreational facilities are provided to serve the residents of the development, the open space requirements may be reduced in proportion to the value of the improvements made by the applicant up to a maximum of 25 percent of the total requirement as determined by the planning and development director.

(e) *Maintenance.* The owner or lessee of the property designated as the open space shall be responsible for the maintenance of the open space area. Landscaped areas shall be maintained in good condition and the entire area shall be kept clear of debris. Failure to maintain the area shall constitute a violation of this chapter and subject the violator to the penalty provisions of section 7-18-2 if not corrected within 30 days of notification. Alternatively, if acceptable to the parks and recreation director and/or public works director, as applicable, the land may be dedicated to the city for public use and thereafter maintained by the city.

(f) *Fee-in-lieu.* For open space requirements of 10,000 or less square feet in area and not involving property affected by the Greenway Master Plan, a property owner may elect to pay a fee-in-lieu of open space instead of providing the open space. For other required open space areas, a property owner may pay a fee-in-lieu of open space designation for all or a portion of the open space requirement if such fee-in-lieu is acceptable to both the parks and recreation director and planning director. This fee shall be calculated by using the pro rata value of the designated property relative to the value of the entire site to be developed using tax appraisal data; for properties covered by agricultural or other exemptions, the city may utilize a separate appraisal method in its sole discretion. Funds collected in this manner shall be maintained in a separate account and shall be used to purchase or to enhance recreational use of property necessary to implement features of the Greenway Master Plan or the Parks and Recreation Master Plan of the City of Asheville provided such features are reasonably proximate to the site(s) from which the funds are collected. Where practical, the collected fees for each project shall be designated for specific parks and recreation acquisitions and/or enhancements by the parks and recreation director. For developments and subdivisions containing more than 50 residential units, the fee-in-lieu option may only be used for up to 50% of the open space requirements in order to ensure

that these larger projects provide on-site open space for their residents; developments in urban-scale mixed use districts (NCD, UV, URD, UPD) are exempt from this requirement and up to 100% of the open space requirements may be accommodated through fee-in-lieu payments regardless of development size.

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall become effective upon adoption.

Read, approved, and adopted this _____ day of _____, 2007.

City Clerk

Mayor

Approved as to form:

City Attorney

ORDINANCE NO. _____

**ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE
CITY OF ASHEVILLE CREATING RETAINING WALL REQUIREMENTS.**

WHEREAS, the City of Asheville has the authority pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the City's zoning regulations was adopted on May 27, 1997 (Ordinance No. 2369) and is codified in Chapter 7 of the Asheville City Code (herein "Unified Development Ordinance"), and maps dividing and classifying the property within the City's zoning jurisdiction were adopted on May 27, 1997 (Ordinance No. 2370) and are on file and maintained in the offices of the Asheville Planning and Development Department (herein "Official Zoning Maps"); and

WHEREAS, the Asheville City Council has determined following a public hearing on _____, that it is in the interest of the public health, safety and welfare to amend certain provisions of the Unified Development Ordinance to create retaining wall requirements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. A new Section 7-11-3 be established to read as follows:

Section 7-10-5. Retaining walls.

Retaining walls in excess of eight feet in height shall be faced with natural stone, brick, form-liner art or patterns, or vegetation in order to avoid a stark appearance. Foreground landscaping or attached vegetative screening of retaining walls or retaining wall sections over eight feet in height and closer than 35 feet to a public or private street shall also be required in accordance with the following standards. Foreground landscaping or attached vegetative screening in accordance with the following standards shall also be required for any retaining walls or retaining wall sections over 20 feet in height regardless of location relative to a public or private street.

Attached vegetative screening shall consist of stainless steel other approved vine supports structurally integrated into the wall to support vine planting from the approved species list for such applications. Foreground landscaping or attached vegetative screening may be considered part of any required buffer, as applicable. Retaining walls 15 feet or less in height shall be exempted from the foreground landscaping or attached vegetative screening requirements if faced with natural stone.

Retaining Wall Height	Required Foreground Landscaping or Vegetative Screening (Either/Or)	
	Minimum Required Foreground Landscaping	Minimum Required Attached Vegetative Screening
>8-15 feet	5 foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center	5 foot wide planting strip at wall base with attached vegetative screening supports covering 50% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center
>15-20 feet	5 foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center plus 1 small maturing tree for every 30 linear feet	5 foot wide planting strip at wall base with attached vegetative screening supports covering 50% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center
>20 feet-30 feet	8 foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center plus 1 small maturing tree for every 30 linear feet	5 foot wide planting strip at wall base with attached vegetative screening supports covering 60% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center
>30 feet	10 foot wide planting strip at wall base with 3 gallon-sized bushes planted 5 feet on center plus 1 large maturing tree for every 40 linear feet	5 foot wide planting strip at wall base with attached vegetative screening supports covering 75% of wall face and plantings consisting of 2 gallon-sized vines planted 3 feet on center

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall become effective upon adoption.

Read, approved, and adopted this _____ day of _____, 2007.

City Clerk

Mayor

Approved as to form:

City Attorney